

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

**CASIE JO MCGEE and SARA ELIZABETH
ADKINS; JUSTIN MURDOCK and WILLIAM
GLAVARIS; and NANCY ELIZABETH
MICHAEL and JANE LOUISE FENTON,
Individually and as next friends of A.S.M.,
minor child,**

Plaintiffs,

v.

Civil Action No. 3:13-24068

**KAREN S. COLE, in her official capacity as
CABELL COUNTY CLERK; and VERA J.
MCCORMICK, in her official capacity as
KANAWHA COUNTY CLERK,
Defendants,**

and

**STATE OF WEST VIRGINIA,
Defendant-Intervenor.**

**DEFENDANT-INTERVENOR'S MOTION TO AMEND
THE DEADLINE TO RESPOND TO
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Defendant-Intervenor State of West Virginia respectfully moves this Court for an order amending the deadline for Defendants and the State to respond to Plaintiffs' motion for summary judgment. On January 17, 2014, this Court issued an order requiring Defendants and the State to respond to Plaintiffs' motion for summary judgment seven days after the Court issues its order on the pending motions to dismiss ("MTD Order"), if the Court does not dismiss this matter in its entirety. The State respectfully request that this Court amend that deadline to permit Defendants

and the State until February 7, 2014, or seven days after the Court's MTD Order, whichever is later, to respond to Plaintiffs' motion for summary judgment.

In support thereof, the State asserts the following good cause:

1. This matter is a significant case involving the constitutionality of several State statutes.

2. Three motions to dismiss have been fully briefed with this Court and are awaiting this Court's decision.

3. If granted, these motions to dismiss could result in the elimination of some or all issues from this case.

4. In the event that this Court does not dismiss the case entirely, the parties agree that this case is likely to be decided on motions for summary judgment, and therefore the briefs on summary judgment will be the parties' only opportunity to address the merits.

5. On December 30, 2013, Plaintiffs filed their motion for summary judgment.

6. Counsel for the State have been diligently working on the State's opposition to Plaintiffs' motion in the meantime and, in the interest of moving the case forward expeditiously, have also been preparing a cross-motion for summary judgment. Counsel have also been preparing the State's answer to Plaintiffs' complaint.

7. From December 30, 2013, until today, however, lead counsel for the State has simultaneously been engaged in the press of other significant State matters, including other matters in this case, and was also delayed by the chemical spill in the Charleston area. Foremost among those issues were:

a. A motion to dismiss filed in the West Virginia Supreme Court of Appeals on January 6, 2014;

b. The reply in support of the State's motion to dismiss filed in this Court on January 9, 2014;

c. The chemical spill into Charleston's water supply on January 9, 2014, which the Attorney General's Office is investigating and which prevented the use of water in Charleston and other nearby areas for several days;

d. A matter argued in the West Virginia Supreme Court of Appeals on January 22, 2014; and

e. A substantive brief filed in the West Virginia Supreme Court of Appeals yesterday, January 23, 2014.

8. Over the next several days, lead counsel for the State must also prepare to personally present oral argument before the United States Court of Appeals for the Fourth Circuit in Richmond, Virginia, next Tuesday, January 28, 2014.

9. Under the current schedule, Defendants' and the State's responses (and cross motions) could be due as soon as Friday, January 31, 2014, if this Court were to issue its MTD Order today.

10. In light of the foregoing, and to ensure that Defendants have sufficient time to revise and finalize their briefs in this highly significant case following this Court's forthcoming MTD Order, the State respectfully requests that this Court amend the current schedule to require Defendants' and the State's responses be filed on the later of: February 7, 2014, or seven days after this Court's MTD Order.

11. This proposed amended schedule ensures that Defendants and the State have sufficient time to finalize their briefs if the MTD Order is issued within the next week, but also ensure that they have time to review and respond to the MTD Order if it is issued the following

week or any time thereafter. Until the MTD Order issues, Defendants and the State cannot know which claims will remain under consideration for purposes of summary judgment.

12. The proposed amendment is a minor change that will result in, at most, a seven-day extension, as entry of the MTD Order today would otherwise require a response by January 31, 2014. The extension decreases each day the MTD Order remains outstanding and ultimately becomes moot.

13. The State is not seeking this amendment for the purpose of delay, but rather to ensure sufficient time to properly brief the merits of this significant case after the Court has an opportunity to consider and rule on the motions to dismiss.

14. Counsel for the State conferred with Plaintiffs' counsel earlier this week, but opposing counsel would not agree to this amendment unless Defendants and the State: (a) agreed to file their future reply briefs no later than seven days after Plaintiffs file their next brief; and (b) committed to not seeking any extensions of time for those replies. Defendants and the State have been, and intend to continue, proceeding in this case with all deliberate speed, but could not agree to those conditions in a case of this significance.

Respectfully submitted,

**ATTORNEYS FOR DEFENDANT-
INTERVENOR STATE OF WEST VIRGINIA**

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Dated: January 24, 2014

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CERTIFICATE OF SERVICE

I, Elbert Lin, counsel for the Movant, hereby certify that on January 24, 2014, I electronically filed the foregoing *Defendant-Intervenor's Motion To Amend The Deadline To Respond To Plaintiffs' Motion For Summary Judgment* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to:

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